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Paper No.

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COPY MAILED

MAY 15 2008

OFFICE OF PETITIONS

In re Application of :
Gocke et al. :
Application No. 10/680,060 : LETTER REGARDING
Filed: October 7, 2003 : PATENT TERM ADJUSTMENT
Attorney Docket No. 97,078-P :

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)" filed December 12, 2007. Pursuant to their duty of good faith and candor to the Office, applicants disclose that the proper number of days of patent term adjustment as indicated on the determination of patent term adjustment should be corrected from five hundred forty-one (541) days to five hundred twenty-seven (527) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred one **(401)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 15, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 541 days. Applicants state they should have been charged with 14 days of delay for taking in excess of three months, until August 15, 2007, to file a response to the Office action mailed May 1, 2007.

Applicants are correct. Pursuant to 37 CFR 1.704(b), a period of reduction of 14 days should have been entered for this applicant delay.

Moreover, a review of the application history reveals further applicant delay. 37 CFR 1.704(c)(8) establishes submission of a supplemental reply or other paper after a reply has been filed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. After the filing of the reply on August 15, 2007, on August 21, 2007, applicants filed an information disclosure statement (IDS). This IDS was not expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8). Further, the IDS did not include a 1.704(d) statement such that its submission would not constitute a failure to engage. Pursuant to 37 CFR 1.704(c)(8), a period of reduction of 6 days is being entered, counting the number of days in the period beginning on the day after the date the initial reply was filed, August 16, 2007 and ending on the date that the other paper, the IDS, was filed, August 21, 2007.

Moreover, 37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. The reference to 37 CFR 1.135(c) is parenthetical because 37 CFR 1.704(c)(7) is not limited to Office actions under 37 CFR 1.135(c) but applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected: e.g., (1) a decision on a petition under 37 CFR 1.47 dismissing the petition as lacking an item necessary to grant the petition; or (2) a notice indicating that the computer readable format sequence listing filed in reply to a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (PTO-1661) does not comply with 37 CFR 1.821 et seq.

In this instance, a reply to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (PTO-1661)

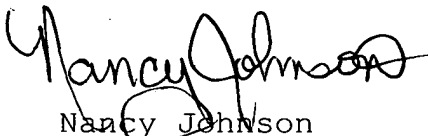
mailed July 21, 2004 was filed on September 23, 2004. Thereafter, further Notices were mailed on October 18, 2004, November 16, 2004, and January 5, 2005 indicating that applicants' responses to the Notice to Comply contained omissions. Not until January 21, 2005 was a reply filed correcting the omissions. Accordingly, a period of reduction of 120 days is being entered for the period beginning on the day after the date the reply having an omission was filed, September 24, 2004 and ending on the date that the reply correcting the omission was filed, January 21, 2005.

In view thereof, it is concluded that the determination of PTA at the time of the mailing of the notice of allowance is FOUR HUNDRED ONE (401) days (541 days of Office delay reduced by 120 + 14 + 6 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and to the extent the period has not been consumed by the filing of requests for continued examination).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Monday
Date: 5/12/2008

PALM INTRANET

Time: 16:56:11

PTA Calculations for Application: 10/680060			
Application Filing Date:	10/07/2003	PTO Delay (PTO):	541
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	401
PTO Delay Adjustment:	-140		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
102	05/12/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		120	
101	05/12/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		6	
100	05/12/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		14	
92	11/15/2007	MAIL NOTICE OF ALLOWANCE			
91	11/09/2007	ISSUE REVISION COMPLETED			
90	11/09/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
89	11/01/2007	PARALEGAL TD ACCEPTED			
87	10/31/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
86	10/31/2007	DOCUMENT VERIFICATION			
85	10/22/2007	TERMINAL DISCLAIMER FILED		0	82
84	10/29/2007	NOTICE OF ALLOWABILITY			
83	10/27/2007	DATE FORWARDED TO EXAMINER			
82	10/22/2007	RESPONSE AFTER NON-FINAL ACTION			
81	09/06/2007	MAIL NON-FINAL REJECTION			
80	09/04/2007	NON-FINAL REJECTION			
79	08/21/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
78	08/15/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
77	05/22/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
76	08/21/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
75	08/21/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
74	08/20/2007	PARALEGAL TD ACCEPTED			

73	08/15/2007	TERMINAL DISCLAIMER FILED			
72	08/15/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
71	08/17/2007	DATE FORWARDED TO EXAMINER			
70	08/15/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
69	08/17/2007	DATE FORWARDED TO EXAMINER			
68	08/15/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
67	08/17/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
66	08/15/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
65	08/15/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
64	08/15/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
63	05/22/2007	REFERENCE CAPTURE ON IDS			
62	05/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
61	05/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	05/01/2007	MAIL FINAL REJECTION (PTOL - 326)			
59	04/30/2007	FINAL REJECTION			
58	02/23/2007	DATE FORWARDED TO EXAMINER			
57	02/14/2007	RESPONSE AFTER NON-FINAL ACTION			
56	11/14/2006	MAIL NON-FINAL REJECTION			
55	11/13/2006	NON-FINAL REJECTION			
54	09/08/2006	DATE FORWARDED TO EXAMINER			
53	09/01/2006	RESPONSE AFTER NON-FINAL ACTION			
52	06/01/2006	MAIL NON-FINAL REJECTION	541		-1
51	05/30/2006	NON-FINAL REJECTION			
49	02/17/2005	APPLICATION RETURN FROM OIPE			
48	02/17/2005	APPLICATION RETURN TO OIPE			
47	02/17/2005	APPLICATION RETURN FROM OIPE			
46	02/18/2005	APPLICATION IS NOW COMPLETE			
45	02/17/2005	APPLICATION RETURN TO OIPE			
44	02/17/2005	APPLICATION RETURN FROM OIPE			
43	02/17/2005	APPLICATION IS NOW COMPLETE			
42	01/21/2005	ADDITIONAL APPLICATION FILING FEES			

41	01/21/2005	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
40	02/08/2005	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
39	01/21/2005	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
38	01/21/2005	WORKFLOW INCOMING AMENDMENT IFW			
37	01/05/2005	SEQUENCE ERRORS			
36	12/13/2004	ADDITIONAL APPLICATION FILING FEES			
35	12/13/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
34	12/23/2004	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
33	11/16/2004	SEQUENCE ERRORS			
32	09/21/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
31	10/29/2004	ADDITIONAL APPLICATION FILING FEES			
30	10/29/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
29	10/29/2004	PRELIMINARY AMENDMENT			
28	11/08/2004	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
27	10/29/2004	WORKFLOW INCOMING AMENDMENT IFW			
26	10/18/2004	SEQUENCE ERRORS			
25	09/21/2004	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
24	09/21/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
23	09/30/2004	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
21	10/07/2003	ADDITIONAL APPLICATION FILING FEES			
20	10/07/2003	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
19	01/23/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
18	07/20/2004	APPLICATION RETURN TO OIPE			
17	06/22/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	06/07/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	06/07/2004	CASE DOCKETED TO EXAMINER IN GAU			

14	10/07/2003	PRELIMINARY AMENDMENT			
13	01/22/2004	APPLICATION RETURN FROM OIPE			
12	01/23/2004	APPLICATION IS NOW COMPLETE			
11	01/22/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
10	01/22/2004	APPLICATION RETURN TO OIPE			
9	01/22/2004	APPLICATION RETURN FROM OIPE			
8	01/22/2004	APPLICATION RETURN TO OIPE			
7	01/21/2004	APPLICATION DISPATCHED FROM OIPE			
6	01/22/2004	APPLICATION IS NOW COMPLETE			
5	12/31/2003	CLEARED BY L&R (LARS)			
4	12/22/2003	CASE CLASSIFIED BY OIPE			
3	12/22/2003	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
2	12/07/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/07/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) Home page